ANDRÉ JACQUE

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

(608) 266-9870
Fax: (608) 282-3602
Toll-Free: (888) 534-0002
Rep.Jacque@legis.wi.gov

P.O. Box 8952
Madison, WI 53708-8952

Testimony before the Committee on Transportation concerning AB 180

August 30, 2011

Chairman Petrowski and members of the Assembly Transportation Committee,

Thank you for holding this hearing and for the opportunity to appear before you as author of Assembly Bill 180, which would restore fairness in the determination of liability for temporary road defects.

As the result of a 1998 Wisconsin Supreme Court decision, counties and municipalities –local taxpayers- can be held liable (up to $50,000 per occurrence) for damage caused to vehicles by roadway defects- such as potholes- which can develop with little warning. State government is exempted from this legal and financial exposure, despite the fact that it is responsible for providing guidelines for proper road maintenance. As noted in fiscal estimates from both the Department of Transportation and the Department of Revenue, this legislation will result in decreased costs to local governments and taxpayers for insurance, legal defense and financial settlements stemming from this loophole.

The Supreme Court has noted this inconsistency and called for a legislative remedy to address the situation- a remedy that has passed the legislature twice with bi-partisan support, most recently as 2005 AB 509, only to be struck down by former Governor Doyle's veto pen at the request of the trial lawyer lobby. This bill will extend immunity to local governments for such road defects, as long as the damages were not caused by egregious negligence, such as failing to appropriately sign that a bridge is out.

Now I know that the trial lawyer lobby will come after me in a few minutes, as it did in an editorial earlier this month, and claim that our local elected officials and road maintenance employees are not to be trusted. That those most responsive to protecting the quality of life of their constituents- and in some cases the people that are actually filling in the potholes- are looking for any excuse to endanger public safety that they can get away with. That's insulting.

As a former city government employee who was once involved in processing claims for alleged damage from potholes, I can tell you that the chances of an average citizen actually receiving compensation in such situations is exceedingly rare. Unless you are a trial attorney or have very close family ties to one, there probably isn't anyone to take your case. The trial attorneys will paint an emotional and sensational picture of the future if one of their revenue streams disappears. And this bill does nothing to diminish the value of auto insurance policies. Let's put an end to the fear-mongering.

The time processing these cases, the legal costs incurred, the prospect of paying a settlement to avoid being bullied by a big-time attorney? Those costs are real, and I hope that we can once again act in a bi-partisan manner to restore common sense to pothole liability.

Thank you for your consideration, and I welcome any questions you may have.

STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT

Written Testimony of Representative Garey Bies
Assembly Committee on Transportation
Assembly Bill 206 – Inattentive Driving

Chairman Petrowski, committee members. Thank you for the opportunity to submit testimony on Assembly Bill 206 relating to inattentive or distracted driving.

I first introduced this legislation during the 2005 session as a result of observations by law enforcement of an increase in distracted drivers upon Wisconsin's highways. With the increase of electronic devices finding their way into our cars, law enforcement wants to re-enforce the notion that as we drive our cars, our most important responsibility is the safety of our passengers, as well as the safety of drivers and passengers of other vehicles on the highways with us. Over the ensuing years, the prevalence of technology in our daily lives has only increase giving ever greater need for this legislation. This proposal will give law enforcement the ability to take action against activities that cause accidents when these activities are to the point that drivers are no longer in control of their vehicles.

With the introduction of electronic devices such as portable digital video disc players, portable video cassette recorders and portable digital devices that can handle everything from e-mail to pocket computing, it is time to update Wisconsin law to the 21st century.

Assembly Bill 206 updates Chapter 346 to reflect the fact that television broadcasts are no longer the only type of video likely to be viewed by vehicle occupants. AB 206 updates this language in a manner to include any type of moving video image, whether broadcast or recorded. An exemption is provided for technology associated with safely operating the vehicle, such as video displays utilized in the backing up of a vehicle.

I would like to comment briefly on how AB 206 impacts a couple of specific devices. First, cell phone use: Assembly Bill 206 specifically states that cell phone use is not prohibited so long as it is used for verbal communication.

Secondly, Global Positioning System devices are also exempt so long as the devices are somehow affixed to the vehicle so that they are stationary. Under this draft, a driver cannot hold a GPS device in his or her hand, and the GPS device cannot simply be placed on the dashboard where it can slide around or fall as the vehicle moves. It is important to note that my intention and consequently that of the legislation, is to promote the use of GPS devices in a safe manner. Therefore, if the device is mounted in ANY fashion, whether it be mounted permanently in the dash, attached to the windshield by a temporary suction-cup mount, or even on the dash with as basic a mount as a bean-bag, the GPS device conforms.

First for Wisconsin!

Capitol: P.O. 8952, Madison, WI 53708-8952 • (608) 266-5350 • Fax: (608) 282-3601
Toll-Free: (888) 482-0001 • Rep.Bies@legis.wi.gov
www.legis.state.wi.us/assembly/asm01/news/

Home: 2520 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811

In closing, under AB 206, drivers who use common sense behind the wheel of a vehicle will have nothing to fear of law enforcement infringing upon them. Drivers who let their actions interfere with their ability to drive safely can be assured there will be a penalty and hopefully that penalty will be a ticket, not an accident.

Once again thank you for the opportunity to submit testimony on Assembly Bill 206.

Google Search

Statistics and Facts About Distracted Driving

What does it mean to be a distracted driver? Are you one? Learn more here.

What is Distracted Driving?
Did You Know?
Examination of Driver Distraction by NHTSA
Use of Electronic Devices While Driving

What Is Distracted Driving?

There are three main types of distraction:

- Visual — taking your eyes off the road
- Manual — taking your hands off the wheel
- Cognitive — taking your mind off what you're doing

Distracted driving is any non-driving activity a person engages in that has the potential to distract him or her from the primary task of driving and increase the risk of crashing.

While all distractions can endanger drivers' safety, texting is the most alarming because it involves all three types of distraction.

Other distracting activities include:

- Using a cell phone
- Eating and drinking
- Talking to passengers
- Grooming
- Reading, including maps
- Using a PDA or navigation system
- Watching a video
- Changing the radio station, CD, or Mp3 player.

back to top

Did You Know?

Research on distracted driving reveals some surprising facts:

- 20 percent of injury crashes in 2009 involved reports of distracted driving. (NHTSA).
- Of those killed in distracted-driving-related crashed, 995 involved reports of a cell phone as a distraction (18% of fatalities in distraction-related crashes). (NHTSA)
- In 2009, 5,474 people were killed in U.S. roadways and an estimated additional 448,000 were injured in motor vehicle crashes that were reported to have involved distracted driving. (FARS and GES)
- The age group with the greatest proportion of distracted drivers was the under-20 age group -- 16 percent of all drivers younger than 20 involved in fatal crashes were reported to have been distracted while driving. (NHTSA)
- Drivers who use hand-held devices are four times as likely to get into crashes serious enough to injure themselves. (Source: Insurance Institute for Highway Safety)
- Using a cell phone use while driving, whether it's hand-held or hands-free, delays a driver's reactions as much as having a blood alcohol concentration at the legal limit of .08 percent. (Source: University of Utah)

back to top

Examination of Driver Distraction

Driver Distraction Facts and Figures

Important information regarding driver distraction comes from records of traffic fatalities and injuries collected by the National Highway Traffic Safety Administration.

Welcome to the Fast Lane

Please visit my blog where I regularly write about the challenges we face with distracted driving.

READ MORE

STAY CONNECTED

Overview

Driver distraction could present a serious and potentially deadly danger. In 2009, 5,474 people were killed in U.S. roadways and an estimated additional 448,000 were injured in motor vehicle crashes that were reported to have involved distracted driving. Distracted driving comes in various forms, such as cell phone use, texting while driving, eating, drinking, talking with passengers, as well as using in-vehicle technologies and portable electronic devices.

There are other less obvious forms of distractions including daydreaming or dealing with strong emotions.

While these numbers are significant, they may not state the true size of the problem, since the identification of distraction and its role in a crash can be very difficult to determine using only police-reported data. New data sources are available to provide more details on the type and presence of driver distraction.

Highlights

Police-reported data from the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling show that:

- In 2009, there were 30,797 fatal crashes in the United States, which involved 45,230 drivers. In those crashes 33,808 people died.
- In 2009, 5,474 people were killed in crashes involving driver distraction (16% of total fatalities).
- The proportion of fatalities reportedly associated with driver distraction increased from 10 percent in 2005 to 16 percent in 2009. During that time, fatal crashes with reported driver distraction also increased from 10 percent to 16 percent.
- The portion of drivers reportedly distracted at the time of the fatal crashes increased from 7 percent in 2005 to 11 percent in 2009.
- The under-20 age group had the highest proportion of distracted drivers involved in fatal crashes (16%). The age group with the next greatest proportion of distracted drivers was the 20- to-29-year-old age group – 13 percent of all 20-to-29-year-old drivers in fatal crashes were reported to have been distracted.
- Of those drivers reportedly distracted during a fatal crash, the 30-to-39-year-old drivers were the group with the greatest proportion distracted by cell phones. Cell phone distraction was reported for 24 percent of the 30-to-39-year-old distracted drivers in fatal crashes.
- Light-truck drivers and motorcyclists had the greatest percentage of total drivers reported as distracted at the time of the fatal crash (12% each). Bus drivers had the lowest percentage (6%) of total drivers involved in fatal crashes that were reported as distraction-related.
- An estimated 20 percent of 1,517,000 injury crashes were reported to have involved distracted driving in 2009.

The National Motor Vehicle Crash Causation Survey (NMVCCS) is a nationally representative survey specifically focused toward documenting events and conditions leading up to crashes.

- NMVCCS captures distraction as an associated factor to the crash and/or as the critical reason that made the crash imminent. Driver distraction was coded as the critical reason in 18 percent of the crashes. Data describing the specifics of the distraction — for example adjusting the radio or eating — are included in this data set.

Another method for collecting pre-crash data is through naturalistic driving studies, in which vehicles are equipped with cameras and data recording equipment.

- During NHTSA's 100-Car Naturalistic Driving Study, driver involvement in secondary tasks contributed to more than 22 percent of all crashes and near-crashes recorded during the study period.

Data Sources

The following NHTSA data sources were used in the research:

- Fatality Analysis Reporting System (FARS)
- National Automotive Sampling System (NASS) General Estimates System (GES)
- National Motor Vehicle Crash Causation Survey (NMVCCS)
- The 100-Car Naturalistic Driving Study
- National Occupant Protection Use Survey (NOPUS) of Driver Electronic Use
- Motor Vehicle Occupant Safety Survey (MVOSS)

back to top

Use of Electronic Devices While Driving

A 2009 survey by the National Highway Traffic Safety Administration (NHTSA) reveals an increase in the use of electronic devices while driving and some regional differences in this practice.

Overview

The percentage of young drivers manipulating a hand-held electronic device while driving has decreased from 2008, according to the National Highway Traffic Safety Administration's 2009 nationwide survey, which provides the only nationwide probability-based observed data on driver electronic device use in the United States. The

survey shows that the hand-held cell phone use rate in 2009 translates into 672,000 vehicles being driven by someone using a hand-held cell phone at any given moment during daylight hours. It also translates into an estimated 9 percent of all vehicles that had drivers who were using some type of phone (hand-held or hands-free).

Highlights

- Nationwide, those drivers observed visibly manipulating hand-held electronic devices dropped significantly from 1.0 percent to 0.6 percent.
- Some 1.1 percent of drivers 16 to 24 years old were observed visibly manipulating hand-held electronic devices, down from 1.7 percent the previous year
- More drivers in Southern States were observed manipulating hand-held electronic devices (1.0%) than in the other regions of the country (from 0.2% in the Midwest to 0.5% in the West).
- The use of hand-held devices decreased the most in the West, from 2.1 percent in 2008 to 0.5 percent in 2009.
- The percentage of drivers visibly manipulating hand-held devices while driving was higher among females (0.7%) than among males (0.5%).

Methodology

The results above are from the National Occupant Protection Use Survey (NOPUS), which provides the only nationwide probability-based observed data on driver electronic device use in the United States. The NOPUS is conducted annually by the National Center for Statistics and Analysis (NCSA) of the National Highway Traffic Safety Administration. The survey observes usage as it actually occurs at randomly selected roadway sites. The survey data is collected by trained observers at probabilistically sampled intersections controlled by stop signs or stoplights, where vehicle occupants are observed from the roadside. Data is collected between 7 a.m. and 6 p.m.

Only stopped vehicles are observed to allow time to collect a variety of information required by the survey, including subjective assessments of occupants' age and race. Observers collect data on the driver, right-front passenger, and up to two passengers in the second row of seats. Observers do not interview occupants, so that the NOPUS can capture the untainted behavior of occupants. The 2009 NOPUS data was collected between June 1 and June 22, 2009, while the 2008 data was collected between June 2 and June 22, 2008.

back to top